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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

MARTIN MUSONGE, Plaintiff and Appellant, v. BANK OF AMERICA CORPORATION et al., Defendants and Respondents.	A137116 (Contra Costa County Super. Ct. No. MSC10-01952)

Martin Musonge appeals from judgments entered after the trial court sustained demurrers to his first amended complaint. He contends that the first amended complaint states viable causes of action and that the court abused its discretion in denying his request to file a second amended complaint. We disagree, and we therefore affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In July 2005, Musonge and his wife purchased a home in Richmond. They obtained a loan from Countrywide Bank[1] in the amount of $711,656.25 to help finance the property. They also obtained a second loan from the bank in the amount of $142,331 for a revolving line of credit. These loans were secured with two trust deeds, naming CTS Foreclosure Services Corporation as trustee and Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary and nominee for the bank.

[1]Bank of America is the successor to Countrywide, and we will refer to them collectively as "the bank."

In March 2008, Musonge stopped making his mortgage payments after his income declined as the result of a divorce. A few months later, in June, a notice of default was recorded against the property, and in September a notice of trustee's sale was recorded. The sale has apparently not yet occurred.

In May 2010, MERS allegedly conveyed its interest in the first deed of trust to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP.[2] And, at some later point, Real Time Resolutions, Inc. (Real Time) acquired an interest in the second loan.

Musonge filed his original complaint on July 1, 2010.[3] In it, he asserted two causes of action: one for "Breach of Contract, Violation of the duties of Good Faith and Fair Dealing," and the other for unfair business practices under Business and Professions Code section 17200 (the UCL). Both causes were premised on allegations that the bank illegally failed to refinance the loans. The only named defendant in the original complaint was the bank.

The bank demurred to the original complaint. In sustaining the demurrer, the trial court granted Musonge leave to file a first amended complaint. But the court ordered Musonge to seek further leave if he wanted to add additional causes of action. The court explained to Musonge, "If you want to file anything additional, new and different causes of action, you're going to have to file a motion to amend, and I'll have to allow that." The record contains no indication that Musonge sought or obtained permission to allege new causes of action or to name new defendants.

Nonetheless, Musonge filed a first amended complaint alleging new causes of action and naming new defendants. The causes included: (1) fraud and conspiracy to defraud; (2) violations of the UCL; (3) quiet title; and (4) declaratory relief. In addition

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[2] Bank of America is a successor by merger to BAC Home Loans Servicing, LP.

[3] In a motion to augment the record filed June 7, 2013, the Bank and MERS asked us to take judicial notice of the original complaint, which had not been included as part of the record. We issued an order on June 11, 2013, informing the parties that we would consider the motion along with the merits of this appeal, and we hereby grant it.

to the bank, MERS and Real Time were named as defendants. Instead of asserting claims based on the bank's refusal to refinance the loans, as alleged in the original complaint, Musonge asserted claims primarily based on the bank's conduct in inducing him to take out the loans in the first instance.

Specifically, Musonge alleged that the bank overstated his income as $18,682.41 per month on his loan application even though he had told the bank that his income was approximately $5,200 per month. According to Musonge, if the bank had disclosed his true income, "the loan would have been denied, [he] would not have purchased the [property], and this action would never have been filed." He claimed that the bank induced him to accept a loan that, "after five years, he would be completely unable to afford, and that would force him into foreclosure . . ." (boldface and underlining omitted) and did so because the bank "stood to make large commissions and fees on the loan transaction."

In addition, Musonge alleged that bank representatives told him that the interest rate on the loan was one percent, with payments of $2,236.08 per month, but failed to disclose that the interest rate would increase, up to 5.865 percent after the first year, and that his monthly payments would increase to $4,798.91 per month after five years. Musonge acknowledged that his loan documents explained that the interest rate was adjustable and that the monthly payments would increase, but he asserted that he did not understand these terms because he did not fully read the documents. Extensive documentation relating to the loans and the real estate transaction were attached to the first amended complaint as exhibits.

Only two specific allegations in the first amended complaint were leveled against the newly named defendants, MERS and Real Time. First, Musonge alleged that MERS never legitimately owned the first or second note and lacked the authority to convey them. Second, he alleged that Real Time was not the lawful owner of the second note and that its demands for payments from him were therefore "fraudulent and unlawful."

Two demurrers were filed in response to the first amended complaint. The first was filed on behalf of the bank and MERS; the second was filed on behalf of Real Time.

Defendants also jointly filed a motion to strike the first amended complaint on the ground that it included new causes of action and new defendants in contravention of the trial court's earlier order. Before the demurrers were ruled upon, Musonge filed a motion for leave to file a second amended complaint to add a cause of action for conversion. A hearing was held to consider all of these pending matters, and on September 19, 2012, the trial court sustained the bank's and MERS's demurrer, sustained Real Time's demurrer, denied the motion to strike as moot, denied Musonge's motion to file a second amended complaint, and entered judgment in favor of the bank and MERS. A couple of weeks later, on October 9, 2012, the trial court entered judgment in favor of Real Time.

This appeal followed.

DISCUSSION

I. *The Standards of Review.*

In an appeal from a judgment entered upon a demurrer sustained without leave to amend, we review the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory. (*McClain v. Octagon Plaza, LLC* (2008) 159 Cal.App.4th 784, 791-792.) In doing so, we must assume the truth of "(1) all facts properly pleaded by the plaintiff, (2) all facts contained in exhibits to the complaint, (3) all facts that are properly the subject of judicial notice, and (4) all facts that reasonably may be inferred." (*Neilson v. City of California City* (2005) 133 Cal.App.4th 1296, 1305.) We do not, however, accept the truth of legal contentions, conclusions of law, or deductions drawn from those contentions or conclusions. (*Ibid*.) We may affirm on any basis stated in the demurrer, regardless of the ground on which the trial court based its ruling. (*Carman v. Alvord* (1982) 31 Cal.3d 318, 324.)[4]

[4] Here, the record is silent about the precise grounds upon which the trial court relied. Although the trial court apparently affirmed a tentative ruling, the tentative ruling is not in the record. The transcript of the hearing reveals that the judge was concerned whether the claims were barred by the statutes of limitation and the non-fiduciary nature of the relationship between defendants and Musonge.

We review the court's refusal to allow leave to amend under the abuse of discretion standard. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) In applying this standard, "we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

II. *The Trial Court Properly Sustained the Demurrers.*

Musonge claims that the trial court erred in sustaining defendants' demurrers. He contends that his complaint properly states viable causes of action for fraud, unfair competition, quiet title, and declaratory relief. We disagree.

A. Musonge's Claims of Fraud and UCL Violations Surrounding the Loan Origination Are Barred by the Statutes of Limitation.

Claims for fraud are governed by the three-year statute of limitations. (Code Civ. Proc., § 338, subd. (d).) And claims under the UCL must be brought within four years. (Bus. & Prof. Code, § 17208.) This action was filed on July 1, 2010, but most of the allegations in the first amended complaint concern the origination of the loan, which closed five years earlier—in July 2005. We conclude that Musonge's claims for fraud and UCL violations based on allegations surrounding the loan origination are barred by the statutes of limitation.

Musonge suggests on appeal that the statutes of limitation did not accrue until some unspecified date after the loans' closing because he was unaware of the defendants' illegality until then and because he alleged an on-going conspiracy. Neither point is persuasive.

His claim that he was unaware of defendants' illegality until after closing is unpersuasive because Musonge did not and cannot allege facts demonstrating that he would have been unaware of the alleged illegal conduct at the time of closing if he had exercised reasonable diligence. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808-809.) Musonge's allegations about the loan origination are that bank representatives greatly overstated his income on his loan application, and told him that

the loans' interest rates were and would remain one percent. But Musonge acknowledges that the loans' terms were set forth in the documentation he was given and accepted; he simply asserts that he did not notice these terms and did not fully read the documents.[5] The application for the loans, which Musonge attaches as an exhibit to the first amended complaint, clearly identifies Musonge's income as being $18,682.41 per month. And the adjustable-rate rider attached to the deed of trust on the first note states in large-cap, boldface lettering, "THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHY PAYMENT." In the same document, Musonge acknowledged that "[t]he interest rate I will pay may change on the first day of September, 2005, and on that day every month thereafter." The truth-in-lending statement, also attached as an exhibit to the first amended complaint, states that after 60 months of payments ranging between $2,200 and $2,900, the payments would increase to approximately $4,768.91 for the following 300 months. An attached amortization schedule lists every mortgage payment over the life of the loan and the interest rate for each one. Finally, the deed of trust on the revolving-credit loan states in its first line that it "secures an obligation which calls for payment of interest at a variable interest rate" as set forth in the "revolving credit agreement" between the bank and Musonge.[6]

Rather than pleading facts showing that his lack of awareness of these terms at closing was reasonable (thereby extending the accrual of the statute of limitations), Musonge pleaded facts showing that his lack of awareness was *unreasonable*. "California law . . . requires that the plaintiff, in failing to acquaint himself or herself with the contents of a written agreement before signing it, not [to] have acted in an objectively unreasonable manner." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 423.) "Generally, it is *not reasonable* to fail to read a contract . . . ." (*Brown v. Wells Fargo Bank, N.A.* (2008) 168 Cal.App.4th 938, 959, italics in original.)

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[5] In reviewing a trial court's ruling sustaining a demurrer, "[t]he allegations that we accept as true necessarily include the contents of any exhibits attached to the complaint." (*Jibilian v. Franchise Tax Bd.* (2006) 136 Cal.App.4th 862, 864, fn. 1.)

[6] A copy of the revolving-credit agreement does not appear in the record.

An exception may exist when the other party has fiduciary duties to the non-reading party. "If the defendant is in a fiduciary relationship with the plaintiff, . . . the plaintiff's failure to read the contract would be reasonable. [Citations.] In such a situation, the defendant fiduciary's failure to perform its duty would constitute constructive fraud [citation], the plaintiff's failure to read the contract would be justifiable [citation], and constructive fraud in the execution would be established." (*Ibid.*) Here, there are no allegations that would provide a basis to conclude that the bank, MERS, or Real Time had fiduciary duties to Musonge. Thus, Musonge's failure to read the contents of the documents he signed cannot be deemed to have been reasonable and it, therefore, cannot be a basis to toll the accrual of the statutes of limitation.

Musonge's alternative argument that the statute of limitations did not accrue until some time after closing because an on-going conspiracy was alleged is similarly unpersuasive. He argues that he "pleaded an on-going conspiracy, and given the matters of which judicial notice can be taken, including litigation by the federal government against Bank of America, the allegation rests upon a firm good-faith basis." He argues that that the causes did not start to accrue until the " ' "last overt act" ' " of the conspiracy was completed, citing *Wyatt v. Union Mortgage Co*. (1979) 24 Cal.3d 773, 786. His reliance is misplaced. Unlike the claims in *Wyatt*, Musonge's allegations of conspiracy are fatally imprecise. "General allegations of the existence and purpose of the conspiracy are insufficient and appellant[] must allege specific overt acts in furtherance thereof." (*Chicago Title Ins. Co. v. Great Western Financial Corp.* (1968) 69 Cal.2d 305, 318.) Musonge's first amended complaint fails to describe with even minimal specificity how defendants conspired against him; it merely *concludes* that they did.

Musonge's reliance on *Wyatt* is also misplaced because the representations and conduct giving rise to the alleged conspiracy in that case were carried out by a loan broker—someone, unlike the defendants here, who had fiduciary duties to the mortgagee. (*Wyatt v. Union Mortgage Co., supra*, 24 Cal.3d at pp. 782-783.) As we have already pointed out, no such fiduciary relationship was alleged or can be implied regarding the named defendants. This distinction appears to have been appreciated by the trial court.

In sustaining the demurrers, it explained to Musonge's counsel, "Most of what you're talking about are causes of action that may be sustained if there's a fiduciary duty maybe against the broker. That's not involved here. I've given you plenty of opportunity to put something down. And the way that this one [shook] out, he's not going to be able to state a claim against these defendants."

We conclude that Musonge's claims for fraud and UCL violations for conduct surrounding the loans' origination are barred by the statutes of limitation.

B. Musonge's Claims of Fraud and UCL Violations Arising out of the Roles of MERS and Real Time Unrelated to the Loan Origination Also Fail.

The specific allegations in the first amended complaint about wrongdoing unconnected with the loans' origination are that MERS never legitimately owned the notes and lacked authority to assign them, and that Real Time is not the lawful owner of the second note and that its demands for payments were therefore "fraudulent and unlawful." We address these allegations separately because it is not clear that they are barred by the statutes of limitation. We nonetheless conclude that the trial court properly sustained defendants' demurrers of the causes of action to the extent that they are based on them.

We begin by discussing why these allegations fail to state a claim for fraud. Although the first amended complaint described specific fraudulent representations by bank representatives surrounding the loans' origination, it alleged no specific facts about MERS's or Real Time's authority over or interest in the notes that could give rise to a

claim of fraud.[7] " 'In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] "Thus, ' "the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect." ' [Citation.] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' " ' " (*Small v. Fritz Companies, Inc.*, (2002) 30 Cal.4th 167, 184, italics omitted, quoting *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "The requirement of specificity in a fraud action against a corporation requires the plaintiff to allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) We conclude that the first amended complaint fails to assert a viable claim for fraud based on MERS's or Real Time's authority over or interest in the notes.

We similarly conclude that the first amended complaint fails to state a claim under the UCL based on MERS's or Real Time's authority over or interest in the notes. The UCL prohibits "any unlawful, unfair or fraudulent business act or practice . . . ." (Bus. & Prof. Code, § 17200.) "The scope of the UCL is quite broad. [Citations.] Because the statute is framed in the disjunctive, a business practice need only meet one of the three criteria to be considered unfair competition." (*McKell v. Washington Mutual, Inc.*,

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[7] Nor do we think it could. At the time of closing, Musonge agreed that "[t]he Note or a partial interest in the Note . . . can be sold one or more times without prior notice to [Musonge]." And he specifically agreed that "MERS is a separate corporation . . . acting solely as nominee for [the bank] and [the bank's] successors and assigns," and "has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property. . . ." As we have already pointed out, the allegations show that Musonge acted in an objectively unreasonable manner in failing to read and acquaint himself with the contents of the agreements he signed. (See *Rosenthal v. Great Western Fin. Securities Corp., supra,* 14 Cal.4th at. p. 423; see also *Rosenfeld v. JPMorgan Chase Bank, N.A.* (N.D.Cal. 2010) 732 F.Supp.2d 952, 973 [holding that plaintiff failed to allege fraudulent conduct sufficient to support a UCL claim where he signed adjustable-rate rider in a deed of trust, which clearly explained the terms of the loan].)

(2006) 142 Cal.App.4th 1457, 1471.) " 'Therefore, an act or practice is "unfair competition" under the UCL if it is forbidden by law or, even if not specifically prohibited by law, is deemed an unfair act or practice.' " (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1335.) Here, because we have already determined that the first amended complaint failed to state a claim for fraud for conduct unconnected with the loans' origination, the only remaining prongs of the UCL conceivably applicable are those that prohibit unlawful or unfair business practices.

Musonge, however, cannot state claims under either of these prongs because he has not alleged the type of requisite injury necessary to sustain a UCL claim. In 2004, California voters approved Proposition 64, which amended the UCL to provide that a private person has standing to bring a UCL action only if he or she "has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204; *Troyk v. Farmers Group, Inc.*, *supra*, 171 Cal.App.4th at p. 1335.) "A private plaintiff must make a twofold showing: he or she must demonstrate injury in fact *and* a loss of money or property caused by unfair competition." (*Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1590, italics in original.)

Here, Musonge fails to allege such an injury caused by MERS's or Real Time's authority over or interest in the notes. While he asserts that MERS lacked authority over the notes and that Real Time lacked a lawful interest in them, he does not allege that the payments he made under the notes were not owed. In other words, even if MERS and Real Time unlawfully exercised authority over the notes, Musonge was still obligated to make the payments to *some* entity. Accordingly, he fails to allege an injury in fact and a loss of money as required under Proposition 64. Because Musonge cannot state a claim under the UCL for this reason, we need not address whether his allegations sufficiently

alleged a substantive claim that defendants committed an unlawful or unfair business act.[8]

We conclude that the trial court properly sustained defendants' demurrers on Musonge's claims for fraud or UCL violations based on MERS's or Real Time's authority over or interest in the notes.

C. Musonge Fails to State a Claim for Quiet Title.

Musonge also fails to state a cause of action to quiet title. To state such a cause, Musonge was required to allege that he is the property's rightful owner; that is, that he has satisfied his obligation under the deed of trust. (*Shimpones v. Stickney* (1934) 219 Cal. 637, 649; *Aguilar v. Bocci* (1974) 39 Cal.App.3d 475, 477; see *Miller v. Provost* (1994) 26 Cal.App.4th 1703, 1707 ["a mortgagor of real property cannot, without paying his debt, quiet his title against the mortgagee"].) "Allowing plaintiff[] to recoup the property without full tender would give [him] an inequitable windfall, allowing [him] to evade [his] lawful debt." (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 526.)

Here, Musonge admits he has paid only $150,000 on his mortgage. He has not alleged that he has paid off the remainder of his debt, and he has made no offer to tender the remainder owed. Thus, he is unable to maintain a quiet title action. (*Miller v. Provost, supra,* 26 Cal.App.4th at p. 1707; *Stebley v. Litton Loan Servicing, LLP, supra,* 202 Cal.App.4th at p. 526.)

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[8] Although we need not and do not rule on the substantive sufficiency of Musonge's claims under the UCL, we note that courts have confirmed MERS's ability to act as a nominee to initiate foreclosures under similar provisions. In *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1156, footnote 7, the court held "under California law MERS may initiate a foreclosure as the nominee, or agent, of the noteholder. As we have explained, Civil Code section 2924, subdivision (a)(1) states that a 'trustee, mortgagee, or beneficiary, or *any of their authorized agents*' may initiate the foreclosure process. (Italics added)." (See also *Herrera v. Federal National Mortgage Assn.* (2012) 205 Cal.App.4th 1495; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256.)

Relying on *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, Musonge argues that he is entitled to an exception to the tender requirement. He is mistaken. In *Lona*, the court held that the defendants were not entitled to summary judgment on the basis of the tender requirement because the debt was disputed. (*Id.* at p. 115.) In contrast, Musonge alleged that his interest rates and monthly interest payments were excessive, but he did not allege, and he does not contend, that there is no debt and that he should own the property free and clear. We conclude that the trial court properly sustained the demurrer as to the claim to quiet title.

D. Musonge Is Not Entitled to Declaratory Relief.

As a consequence of having determined that the demurrer was properly sustained on the other causes of action, we conclude that the demurrer was properly sustained on Musonge's claim for declaratory relief. Declaratory relief is available where there is an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) It is not an independent cause of action, but a form of equitable relief. (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 82, disapproved on another ground in *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 626; see also *California Ins. Guarantee Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1623-1624 [declaratory relief statute provides form of relief to plaintiff, not second cause of action for determination of issues subject of another claim].)

Musonge's claim for declaratory relief alleges that defendants have no right to collect money from him and have no right to foreclosure on the deeds of trust. Thus, the cause is wholly derivative of the other causes of action. "Where a trial court has concluded the plaintiff did not state sufficient facts to support a statutory claim and therefore sustained a demurrer as to that claim, a demurrer is also properly sustained as to a claim for declaratory relief which is 'wholly derivative' of the statutory claim." (*Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800.)

We conclude that the trial court properly sustained Musonge's claim for declaratory relief.

III. *The Trial Court Properly Exercised Its Discretion in Denying Musonge Leave to File a Second Amended Complaint.*

We next turn to whether the trial court abused its discretion in denying Musonge leave to file a second amended complaint, and we conclude that it did not.

In arguing that the trial court should have given him another opportunity to amend his complaint, Musonge invokes California's liberal policy in favor of allowing amended pleadings. It is insufficient, however, for Musonge to assert "an abstract right to amend." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.) Instead, he is required to "clearly and specifically" set forth the legal authority for the claims he contends he can allege, the elements of each of those claims, and the specific factual allegations that would establish each of those elements. (*Ibid.*) As the appellant, the burden is on Musonge to demonstrate that the trial court abused its discretion. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) To satisfy his burden, he must show "in what manner" he can amend his complaint "and how that amendment will change the legal effect" of his pleading. (*Ibid.*) "[L]eave to amend should *not* be granted where . . . amendment would be futile." (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685, italics in original.) We conclude that the trial court properly exercised its discretion in denying the amendment because the amendment was futile.

Musonge sought leave to file a second amended complaint to add a cause of action for conversion. Conversion is generally described as the wrongful exercise of dominion over the personal property of another. (*Gruber v. Pacific States Sav. & Loan Co.* (1939) 13 Cal.2d 144, 148.) The basic elements of the tort are "(1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) In Musonge's proposed second amendment, he alleged that the first and second notes were unlawfully transferred. As a result, Musonge alleged that he "is ignorant of who currently owns the [first note], which means he is ignorant of to whom he owes any unpaid balance thereon." He similarly alleged that he "is ignorant as to who currently

owns the [second note] . . ., which means he is ignorant of to whom he owes any unpaid balance thereon."

These allegations negate a claim for conversion because they acknowledge that Musonge lacks a possessory interest in the notes' payments. His claim is essentially that he sent his payments to an incorrect entity because the notes were transferred unlawfully. But just because he sent the payments to the wrong entity does not mean that the payments were his to keep or that he has a right to recover them. Under his allegations, it is the entity that is the proper note holder that is entitled to the payments. Thus, this entity—but not Musonge—has a claim to the payments. In short, Musonge cannot bring a claim for conversion of these payments because by his own admissions he has no possessory interest in them.

The trial court did not abuse its discretion in sustaining defendants' demurrer without leave to amend.

DISPOSITION

The judgments are affirmed.

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Humes, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.